UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte SEBASTIEN BOUAT

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Appeal 2007-2348
Application 10/032,882
Technology Center 2100

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Decided: November 28, 2007

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Before JAMES D. THOMAS, JOSEPH F. RUGGIERO,
and JOHN A. JEFFERY, *Administrative Patent Judges.*

JEFFERY, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134 from the Examiner's
rejection of claims 1-17. We have jurisdiction under 35 U.S.C. § 6(b). We
affirm.

STATEMENT OF THE CASE

Appellant invented a method for processing incoming messages on a gatekeeper system of an Internet Protocol network. Specifically, the method includes dispatching the incoming messages to different sub-processes. If the message belongs to the same call as a previous message, the message is sent to the same sub-process as the previous message.[1] Claim 1 is illustrative:

1. A method for processing messages incoming on a gatekeeper system of an Internet Protocol network, wherein the gatekeeper system includes a gatekeeper and a plurality of sub-processes each able to process a series of such messages, the method comprising:

the gatekeeper receiving incoming messages; and

the gatekeeper dispatching received messages among the plurality of sub-processes, wherein the received messages that belong to the same call are dispatched to the same sub-process.

The Examiner relies on the following prior art references to show unpatentability:

| Brendel | US 6,772,333 B1 | Aug. 3, 2004 (filed Sep. 1, 1999) |
| Ma | US 6,795,867 B1 | Sep. 21, 2004 (filed Dec. 23, 1998) |

Claims 1-17 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Ma and Brendel.

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[1] *See generally* Specification 2:20 – 3:17.

Rather than repeat the arguments of Appellant or the Examiner, we refer to the Briefs and the Answer[2] for their respective details. In this decision, we have considered only those arguments actually made by Appellant. Arguments which Appellant could have made but did not make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

OPINION

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988). In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966).

Discussing the question of obviousness of a patent that claims a combination of known elements, *KSR Int'l v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007) explains:

> When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, §103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill. *Sakraida* [*v. AG Pro, Inc.*, 425 U.S. 273 (1976)] and *Anderson's-Black Rock*[*, Inc. v. Pavement Salvage Co.*, 396 U.S. 57 (1969)] are illustrative—a court must ask whether the improvement is more

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[2] We refer to the most recent Answer mailed November 1, 2006 throughout this opinion.

than the predictable use of prior art elements according to their established functions.

KSR, 127 S. Ct. at 1740. If the claimed subject matter cannot be fairly characterized as involving the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for the improvement, a holding of obviousness can be based on a showing that "there was an apparent reason to combine the known elements in the fashion claimed." *Id.*, 127 S. Ct. at 1740-41. Such a showing requires "some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. . . . [H]owever, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ." *Id.*, 127 S. Ct. at 1741 (quoting *In re Kahn*, 441 F.3d 977, 987 (Fed. Cir. 2006)).

If the Examiner's burden is met, the burden then shifts to the Appellant to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. *See In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

Regarding independent claim 1, the Examiner's rejection essentially finds that Ma discloses a method and system for processing incoming messages on a gatekeeper system of an Internet Protocol network with every claimed feature except for details of identifying the message/call using a session identifier and directing the call to the same process that previously processed the call. The Examiner cites Brendel as teaching a load balancing technique that identifies session and call information by decoding the message. The Examiner concludes that it would have been obvious to one

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of ordinary skill in the art at the time of the invention to modify Ma to direct requests to the same server process that previously processed requests associated with a particular session (Answer 4-5).

Appellant argues that Ma does not disclose the limitations calling for "the gatekeeper receiving incoming messages…and…dispatching received messages among the plurality of sub-processes" as claimed. According to Appellant, Ma's gateway does not disclose the recited gatekeeper since the gateway does not dispatch received incoming messages as claimed. Rather, Appellant contends, the gatekeeper [*sic* -- gateway] performs initial call setup by sending a setup message to the gatekeeper to try to set up the call (App. Br. 6; Reply Br. 4).

Appellant also argues that, upon receipt of the setup message, the gatekeeper passes the setup message to its Load Management Unit (LMU) -- a unit that determines which gatekeeper ("sub-process") will service the call. Appellant notes that if the LMU determines that a different servicing gatekeeper ("sub-process") is to handle the call, the *gateway* -- not the LMU -- dispatches the setup message to the servicing gatekeeper (App. Br. 6-9; Reply Br. 4-5).

Appellant adds that the stand-alone LMU embodiment of Figure 3B also does not teach or suggest "the gatekeeper dispatching received messages among the plurality of sub-processes" as claimed. Appellant emphasizes that, in this embodiment, dispatching messages among different gatekeepers is done by Ma's gateway (Br. 9). Appellant adds that Ma's gateway transmits messages to the LMU 358 -- not the gatekeepers 352, 354, 356 ("sub-processes") (Reply Br. 5).

The Examiner maintains that Ma discloses receiving incoming messages and dispatching messages to plural gatekeeper processes via its ability to redirect calls from an assigned gatekeeper to a servicing gatekeeper. The Examiner notes that the standalone LMU embodiment of Figure 3B shows that the LMU essentially performs a gatekeeping function. According to the Examiner, in that embodiment, the LMU essentially acts as an entry point for incoming calls and dispatches the call to a selected gatekeeper instance (1-N) (Answer 9-10, 13).

We will sustain the Examiner's rejection of independent claim 1. As shown in Figure 1, the key aspects of Ma's IP telephony system that pertain to this appeal are the *gateways* (104, 106) and the *gatekeepers* (108, 109). As the figure illustrates, Ma's system includes multiple gateways 104, 106 coupled to an IP network 102. The gateways are coupled to endpoints 112, 114 and perform various data conversion and network management functions (Ma, col. 3, l. 50 - col. 4, l. 2; Fig. 1).

The gatekeepers 108, 109 perform call setup and servicing functions. The gatekeepers act as the central point for all calls within their respective zones and provide call control services to registered endpoints. To this end, the gatekeepers perform two important call control functions: (1) address translation, and (2) bandwidth management (Ma, col. 5, ll. 18-30).

Associated with the gatekeepers are LMUs that distribute call load among the gatekeepers (e.g., redirecting call load from an overloaded or inoperative gatekeeper to another gatekeeper) (Ma, col. 4, ll. 29-38). During call setup, the LMU receives a setup message from the assigned gatekeeper that was received from a subscriber when initiating a call. The LMU

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determines which gatekeeper should set up and service the call (Ma, col. 2, ll. 43-56).

For example, when an endpoint 112 initiates a call to endpoint 114, the endpoint 112 dials gateway 104 requesting a call to endpoint 114. The gateway 104 answers the call and initates call setup by sending a setup message to gatekeeper 108[3] with which the endpoint previously registered. Gatekeeper 108, in turn, passes the setup message to its LMU.

Upon receipt of this setup message, the LMU determines which gatekeeper 108, 109 will service the call. If the LMU determines gatekeeper 108 will service the call, it transfers control for continued call setup to the gatekeeper 108. But if the LMU determines that gatekeeper 109 will service the call, it directs the gatekeeper to issue a facility redirect message to the endpoint 112, directing gateway 104 to send a setup message to gatekeeper 109. In response, gateway 104 then sends (1) a release message to gatekeeper 108, and (2) a setup message to gatekeeper 109. Upon receipt of the setup message, gatekeeper 109 then sets up and services the call (Ma, col. 5, l. 63 - col. 6, l. 30; Fig. 4).

In addition to these call setup features, calls can be routed through the gatekeepers 108 or 109 for more effective control (e.g., billing purposes) (Ma, col. 5, ll. 43-49).

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[3] Although Ma indicates that the setup message is sent to *gateway* 108 (not *gatekeeper* 108) in Column 5, Line 67, we presume that this designation is a typographical error. Throughout the reference, the numeral 108 consistently refers to a gatekeeper.

Based on this functionality, we find that the gatekeepers 108, 109 (with their associated LMUs)[4] receive incoming messages of various types including call setup messages, as well as the data associated with the call itself via the routing feature noted above.

While we agree with Appellant that the gatekeepers 108, 109 (with their associated LMUs) do not dispatch the particular setup and release messages that were sent from the gateway among the multiple gatekeepers, the gatekeepers' LMUs nevertheless select the appropriate gatekeeper to service the call. Since calls can be routed through the gatekeepers 108 or 109 themselves (Ma, col. 5, ll. 43-49), this selection of an appropriate gatekeeper via the setup process would, in effect, dispatch received messages *pertaining to the call itself* among the various gatekeepers ("sub-processes").[5]

For at least these reasons, and since Appellant has not disputed the Examiner's reliance on the secondary reference to Brendel, we conclude that Appellant has not persuasively rebutted the Examiner's prima facie case of obviousness of independent claim 1 based on the collective teachings of Ma and Brendel. The Examiner's rejection of independent claim 1 is therefore sustained.

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[4] We note in passing that the term "gatekeeper" as claimed does not preclude a combined gatekeeper and associated LMU, such as that shown in Figures 1 and 3A of Ma.

[5] We note in passing that the language of claim 1 does not distinguish the type of messages that the gatekeeper receives and dispatches. That is, the claim does not preclude the gatekeeper and its associated LMU (1) receiving incoming messages in the form of *setup messages*, and (2) dispatching received messages *pertaining to the call itself* among the various gatekeepers via the gatekeeper selection process noted above.

Claims 2-17

Although Appellant nominally argues the rejection of (1) claims 2-10 and 16; (2) claim 11; (3) claim 12; (4) claim 13; (5) claim 14; (6) claim 15; and (7) claim 17 separately (App. Br. 10-12; Reply Br. 7-8), Appellant's arguments have not persuasively rebutted the Examiner's prima facie case of obviousness. Regarding claims 2-10 and 16, Appellant merely states that the claims are patentable by virtue of their dependence on claim 1. For the reasons previously discussed, however, we will sustain the Examiner's rejection of those claims.

Regarding claims 11, 13, and 15 (as well as claims 12, 14, and 17), Appellant merely alleges that the cited prior art does not disclose the recited limitations, but provide no supporting analysis or explanation as to why the cited prior art fails in this regard. *See* App. Br. 10-12; *see also* Reply Br. 7-8. Merely pointing out what a claim recites is not considered an argument for separate patentability of the claim. 37 C.F.R. § 41.37(c)(1)(vii). In any event, Appellants have not persuasively rebutted the Examiner's prima facie case of obviousness based on the collective teachings of the references indicated on pages 3-8 of the Answer. The Examiner's rejection of these claims is therefore sustained.

DECISION

We have sustained the Examiner's rejection with respect to all claims on appeal. Therefore, the Examiner's decision rejecting claims 1-17 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

KIS

HEWLETT-PACKARD COMPANY
Intellectual Property Administration
P. O. Box 272400
Fort Collins, CO 80527-2400